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AMENDED IN SENATE AUGUST 17, 2010

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AMENDED IN ASSEMBLY MAY 28, 2010

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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2398

Introduced by Assembly Member John A. Pérez

February 19, 2010

An act to add Chapter 20 (commencing with Section 42970) to Part 3 of Division 30 of, and to repeal Section 42980 of, the Public Resources Code, relating to recycling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2398, as amended, John A. Pérez. Product stewardship: carpet.

(1) The California Integrated Waste Management Act of 1989, administered by the Department of Resources Recycling and Recovery, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

The bill would require, by September 30, 2011, a manufacturer of carpets sold in this state, individually or through a carpet stewardship organization, to submit a carpet stewardship plan to the department, which would be required to include specified elements, including a funding mechanism that provides sufficient funding to carry out the plan, including administrative, operational, and capital costs of the plan.

The bill would require the funding mechanism to *establish and* provide for, *on and after January 1, 2013*, a carpet stewardship assessment *to be added to the purchase price per unit of carpet sold by a manufacturer, to be paid by each member of the carpet stewardship organization on and after January 1, 2013 in the state by a manufacturer to a California retailer or wholesaler or otherwise sold for use in the state and would require each retailer and wholesaler to add the assessment to the purchase price of all carpet sold in the state.*

The bill would require, ~~until January 1, 2013~~ *April 1, 2015*, the Carpet America Recovery Effort (CARE), a 3rd-party nonprofit stewardship organization ~~established by the Carpet and Rug Institute~~, to serve as the carpet stewardship organization and would allow, ~~on and after January 1, 2013~~ *April 1, 2015*, a carpet stewardship organization appointed by one or more manufacturers, to submit a plan.

The bill would require, ~~as of April July 1, 2011~~, until January 1, 2013, a manufacturer of carpet to add an assessment of \$0.05 per square yard upon the purchase price of all carpet sold in the state by that manufacturer. The bill would require the assessment to be remitted on a quarterly basis, as appropriate, to CARE or would allow the manufacturer to retain that assessment. The bill would require these revenues to be ~~expended~~ *spent* by CARE or by an individual manufacturer, prior to approval of its carpet stewardship plan, only to implement early action measures that are consistent to achieve measurable improvements in the landfill diversion and recycling of postconsumer carpet.

The department would be required to, among other things, within 60 days after the department receives a plan, review and determine whether the plan complies with the bill's requirements and notify the submitter of its decision. The bill would specify that any plan not approved by March 31, 2012, is out of compliance until determined to be complete by the department.

The bill would provide that a manufacturer, wholesaler, or retailer, on and after April 1, 2012, that offers carpet for sale or promotional purposes without an approved plan for that carpet is not in compliance with the act's requirements. *The bill would require the department, by July 1, 2012, and not later than January 1 and July 1 annually thereafter, to post a notice on its Internet Web site listing manufacturers that are in compliance with the bill's requirements. The bill would require a wholesaler or retailer that distributes or sells carpets to*

monitor the department's Internet Web site to determine if the sale of a manufacturer's carpet is in compliance.~~The~~

The act would also require the carpet stewardship organization to demonstrate to the department that it has achieved continuous meaningful improvement in the rates of recycling-rate and diversion and other specified goals in order to be in compliance.

Each manufacturer of carpet sold in the state, individually or through a carpet stewardship organization, would be required to prepare and submit to the department an annual report describing the activities carried out pursuant to the carpet stewardship plan.

A manufacturer or carpet stewardship organization submitting a carpet stewardship plan would be required to pay the department an annual administrative fee when submitting the plan for review and approval, as determined by the department. The bill would also require the department to identify the direct development or regulatory costs incurred by the department prior to the submittal of carpet stewardship plans and to establish a fee in an amount adequate to cover those costs, that would be required to be paid by a carpet stewardship organization that submits a carpet stewardship plan. The bill would provide for the imposition of administrative civil penalties upon a person who violates the bill and would provide that the manufacturer or carpet stewardship organization whose plan is not approved by the department by March 31, 2012, is subject to those penalties until the plan is approved. The department would be authorized to expend those fees and penalties, upon appropriation by the Legislature, to administer the bill's provisions. The bill would establish the Carpet Stewardship Account in the Integrated Waste Management Fund and would require the fees collected by the department to be deposited in that account, for expenditure by the department, upon appropriation by the Legislature, to cover the department's cost to implement the bill's provisions. The bill would also establish the Carpet Stewardship Penalty Subaccount in the Integrated Waste Management Fund and would require that the civil penalties collected by the department pursuant to the bill's provisions be deposited in that subaccount, for expenditure by the department, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions.

The bill would require the department and the Department of General Services to complete a study, by January 1, 2014, that examines the standard specifications for carpet purchases by the state, as provided in the NSF/ANSI 140-2007 Standard, Platinum Level, and to submit

the study to the Governor and the Legislature, including recommendations for any appropriate changes to that standard.

The bill would provide that certain actions of a carpet stewardship organization or its members are not violations of the Cartwright Act or certain provisions regulating unfair business practices or unfair competition.

The bill would require the Department of General Services to revise relevant procurement rules to ensure that postconsumer carpet that is removed from state buildings is managed in a manner consistent with the purposes of the bill.

(2) Existing law requires the Department of Toxic Substances Control to adopt regulations to establish a process to identify and prioritize chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern, as prescribed, and to establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern.

This bill would require the Department of Toxic Substances Control to fully consider the measures taken by the carpet industry pursuant to the program established by the bill, and the results of those measures, when considering whether to include carpet in the product registry adopted under those provisions or to otherwise regulate carpet pursuant to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Discarded carpet is one of the 10 most prevalent waste
- 4 materials in California landfills, equaling 3.2 percent of waste by
- 5 volume disposed of in California in 2008. Because carpet is heavy
- 6 and bulky, it imposes a significant solid waste management cost
- 7 on local governments.
- 8 (b) Numerous products can be manufactured from recycled
- 9 carpets, including ~~carpet, carpet underlayment, automobile parts,~~
- 10 ~~picnic tables, park benches~~ *carpet backing and backing*
- 11 *components, carpet fiber, carpet underlayment, plastics and*

1 *engineered materials*, and erosion control products. Several carpet
2 recycling facilities currently operate in California, producing
3 products and feedstock for products made from recycled carpet.

4 (c) The United States carpet industry has established a
5 third-party nonprofit organization, the Carpet America Recovery
6 Effort, also known as CARE, to ~~increase the work with state~~
7 *governments to increase the amount of* recycling and reuse of
8 postconsumer carpet and reduce the amount of carpet going to
9 landfills.

10 (d) CARE represents at least 90 percent of United States carpet
11 manufacturers and 95 percent of the volume of carpet sold in the
12 United States.

13 (e) According to CARE, in 2008, the most recent year for which
14 data are available, 5.2 percent of carpet was diverted from landfills
15 and 4.3 percent was recycled.

16 (f) It is in the interest of the state to establish a program, working
17 to the extent feasible with the carpet industry *and related*
18 *reclamation entities*, to increase the landfill diversion and recycling
19 of postconsumer carpet generated in California.

20 SEC. 2. Chapter 20 (commencing with Section 42970) is added
21 to Part 3 of Division 30 of the Public Resources Code, to read:

22
23 CHAPTER 20. PRODUCT STEWARDSHIP FOR CARPETS
24

25 42970. The purpose of this chapter is to increase the amount
26 of postconsumer carpet that is diverted from landfills and recycled
27 into secondary products or otherwise managed in a manner that is
28 consistent with the state's hierarchy for waste management
29 practices pursuant to Section 40051.

30 42971. For purposes of this chapter, and unless the context
31 otherwise requires, the definitions in this section govern the
32 construction of this chapter:

33 (a) "Brand" means a name, symbol, word, or mark that identifies
34 the carpet, rather than its components, and attributes the carpet to
35 the owner or licensee of the brand as the manufacturer.

36 (b) "CARE" means the Carpet America Recovery Effort, a
37 third-party nonprofit ~~stewardship organization established by the~~
38 ~~Carpet and Rug Institute~~ *carpet stewardship organization*
39 *incorporated as a nonprofit corporation pursuant to Section*
40 *501(c)(3) of Title 26 of the United States Code in 2002 and*

1 *established* to increase the reclamation and stewardship of
2 postconsumer carpet.

3 (c) “CARE MOU” means the 2012 Memorandum of
4 Understanding for Carpet Stewardship, as to be negotiated among
5 the carpet industry, states, and nongovernmental organization
6 stakeholders as a successor to the 2002 memorandum of
7 understanding.

8 ~~(e)~~

9 (d) (1) “Carpet” means a manufactured article that is used in
10 commercial or residential buildings affixed or placed on the floor
11 or building walking surface as a decorative or functional building
12 interior feature and that is primarily constructed of a top visible
13 surface of synthetic face fibers or yarns or tufts attached to a
14 backing system derived from synthetic or natural materials.

15 (2) “Carpet” includes, but is not limited to, a commercial or a
16 residential broadloom carpet or modular carpet tiles.

17 (3) “Carpet” does not include a rug, pad, cushion, or
18 underlayment used in conjunction with, or separately from, a
19 carpet.

20 ~~(d)~~

21 (e) (1) “Carpet stewardship organization” or “organization”
22 means either of the following:

23 (A) An organization appointed by one or more manufacturers
24 to act as an agent on behalf of the manufacturer to design, submit,
25 and administer a carpet stewardship plan pursuant to this chapter.

26 (B) A carpet manufacturer that complies with this chapter as an
27 individual manufacturer.

28 (2) Notwithstanding paragraph (1), until ~~January 1, 2013~~ April
29 1, 2015, CARE shall be the sole carpet stewardship organization
30 pursuant to subparagraph (A) of paragraph (1).

31 This paragraph does not restrict the option of an individual carpet
32 manufacturer to comply with this chapter as a carpet stewardship
33 organization, on and after January 1, 2011, pursuant to
34 subparagraph (B) of paragraph (1).

35 ~~(e)~~

36 (f) “Carpet stewardship plan” or “plan” means a plan written
37 by an individual manufacturer or a carpet stewardship organization,
38 on behalf of one or more manufacturers, that includes all of the
39 information required by Section 42972.

40 ~~(f) “Consumer” means a purchaser or owner~~

1 (g) “Consumer” means a purchaser, owner, or lessee of carpet,
2 including a person, business, corporation, limited partnership,
3 nonprofit organization, or governmental entity.

4 ~~(g)~~

5 (h) “Department” means the Department of Resources Recycling
6 and Recovery.

7 ~~(h)~~

8 (i) “Label” means a graphic representation of three chasing
9 arrows with a carpet roll inside the arrows, or an alternative design,
10 designed by CARE, *after consultation with retailers and*
11 *wholesalers*, and approved by the department for use on all invoices
12 ~~and contracts or functionally equivalent billing documents~~ pursuant
13 to subparagraph (C) of paragraph (3) of subdivision (c) of Section
14 42972.

15 ~~(i)~~

16 (j) “Manufacturer” means, with regard to a carpet that is sold,
17 offered for sale, or distributed in the state any of the following:

18 (1) The person who manufactures the carpet and who sells,
19 offers for sale, or distributes that carpet in the state under that
20 person’s own name or brand.

21 (2) If there is no person who sells, offers for sale, or distributes
22 the carpet in the state under the person’s own name or brand, the
23 manufacturer of the carpet is the owner or licensee of a trademark
24 or brand under which the carpet is sold or distributed in the state,
25 whether or not the trademark is registered.

26 (3) If there is no person who is a manufacturer of the carpet for
27 the purpose of paragraphs (1) and (2), the manufacturer of that
28 carpet is the person who imports the carpet into the state for sale
29 or distribution.

30 ~~(j)~~

31 (k) “Postconsumer carpet” means carpet that is no longer used
32 for its manufactured purpose.

33 ~~(k) “Program” means the system for the collection,~~
34 ~~transportation, recycling, and disposal of carpets pursuant to a~~
35 ~~completed carpet stewardship plan that is financed and managed~~
36 ~~or provided by an individual manufacturer or collectively by one~~
37 ~~or more manufacturers.~~

38 (l) “Recycling” means the process, consistent with Section
39 40180, of converting postconsumer carpet into a useful product

1 that meets the quality standards necessary to be used in the
2 marketplace.

3 (m) “Retailer” means a person who offers new carpet in a retail
4 sale, as defined in Section 6007 of the Revenue and Taxation Code,
5 including a retail sale through any means, including remote
6 offerings such as sales outlets, catalogs, or an Internet Web site or
7 other similar electronic means.

8 (n) “Sell” or “sales” means a transfer of title of a carpet for
9 consideration, including a remote sale conducted through a sales
10 outlet, catalog, Internet Web site or similar electronic means, but
11 *does not include a lease means. For purposes of this chapter, “sell”*
12 *or “sales” includes a lease through which a carpet is provided to*
13 *a consumer by a manufacturer, wholesaler, or retailer.*

14 (o) “Wholesaler” means a person who offers new carpet for sale
15 in this state in a sale that is not a retail sale, as defined in Section
16 6007 of the Revenue and Taxation Code, and in which the carpet
17 is intended to be resold.

18 42972. (a) On or before September 30, 2011, a manufacturer
19 of carpets sold in this state shall, individually or through a carpet
20 stewardship organization, submit a carpet stewardship plan to the
21 department that will do all of the following:

22 (1) Achieve the purposes of this chapter, as described in Section
23 42970, and meet the requirements of Section 42975.

24 (2) Include goals that, to the extent feasible based on available
25 technology and information, increase the recycling of postconsumer
26 ~~carpet by increasing carpet,~~ *increase* the diversion of postconsumer
27 carpets from landfills, ~~increasing~~ *increase* the recyclability of
28 carpets, and ~~incentivizing~~ *incentivize* the market growth of
29 secondary products made from postconsumer carpet. The goals
30 established in the plan shall, at a minimum, be ~~equal to the goals~~
31 ~~established in a national memorandum of understanding for carpet~~
32 ~~stewardship, if one exists at the time the~~ *equal to the goals*
33 *established in the CARE MOU, if it has been adopted at the time*
34 *the plan is submitted to the department.*

35 ~~(3) Describe measures that will be taken to manage~~

36 *(3) Describe proposed measures that will enable the*
37 *management of postconsumer carpet in a manner consistent with*
38 *the state’s solid waste management hierarchy, including, but not*
39 *limited to, source reduction, source separation and processing to*

1 segregate and recover recyclable materials, and environmentally
2 safe management of materials that cannot feasibly be recycled.

3 (4) Include a funding mechanism, consistent with subdivision
4 (c), that provides sufficient funding to carry out the plan, including
5 the administrative, operational, and capital costs of the plan,
6 *payment of fees pursuant to Section 42977, and incentive payments*
7 *that will advance the purposes of this chapter.*

8 (5) Include education and outreach efforts to consumers,
9 *commercial building owners*, carpet installation contractors, and
10 retailers to promote their participation in achieving the purposes
11 of the carpet stewardship plan as described in paragraph (1). These
12 education and outreach materials may include, but are not limited
13 to, any of the following:

14 (A) Signage that is prominently displayed and easily visible to
15 the consumer.

16 (B) Written materials and templates of materials for reproduction
17 by retailers to be provided to carpet installation contractors and
18 consumers at the time of purchase or delivery or both.

19 (C) Promotional materials or activities, or both, that explain the
20 purpose of carpet stewardship and the means by which it is being
21 carried out.

22 (6) *Include a process by which the financial activities of the*
23 *organization or individual manufacturer that are related to*
24 *implementation of the plan will be subject to an independent audit,*
25 *which may be reviewed by the department.*

26 (b) The plan prepared pursuant to this section shall be designed
27 to accept and manage all suitable postconsumer carpet, regardless
28 of polymer type or primary materials of construction.

29 (c) (1) The funding mechanism required pursuant to paragraph
30 (4) of subdivision (a) shall ~~provide for~~ *establish and provide for,*
31 *on and after January 1, 2013, a carpet stewardship assessment per*
32 *unit of carpet sold by a manufacturer in the state, as determined*
33 *in the plan, to be paid by each member of the carpet stewardship*
34 *organization on and after January 1, 2013, in an amount that*
35 *cumulatively will adequately fund the plan. The assessment per*
36 *unit of carpet sold in the state in an amount that cumulatively will*
37 *adequately fund the plan and be consistent with the purposes of*
38 *the chapter. The assessment shall be remitted to the carpet*
39 *stewardship organization on a quarterly basis and the carpet*

1 stewardship organization may expend the assessment only to carry
2 out the plan.

3 (2) The amount of the assessment and the anticipated revenues
4 from the assessment shall be specified in the plan and shall be
5 approved by the department as part of the plan. The *amount of the*
6 *assessment shall be sufficient to meet, but not exceed, the*
7 *anticipated cost of carrying out the plan. The assessment shall not*
8 *be used competitively by the carpet stewardship organization or*
9 *an individual manufacturer, carrying out the plan. The amount of*
10 *the assessment shall not create an unfair advantage in the*
11 *marketplace.*

12 (3) The assessment established pursuant to this subdivision and
13 Section 42972.5 is exempt from the taxes imposed by Part 1
14 (commencing with Section 6001) of Division 2 of the Revenue
15 and Taxation Code and shall meet both of the following
16 requirements:

17 (A) The assessment shall be added by a manufacturer to the
18 ~~purchase price of all carpet covered by the plan that is sold to a~~
19 ~~retailer or a wholesaler or otherwise sold for use in the state.~~
20 *purchase price of all carpet sold by manufacturers to a California*
21 *retailer or wholesaler or otherwise sold for use in the state.*

22 (B) *Each retailer and wholesaler shall add the assessment to*
23 *the purchase price of all carpet sold in the state.* The assessment
24 shall be clearly visible on all invoices ~~and contracts or functionally~~
25 *equivalent billing documents* as a separate line item and shall be
26 accompanied by a label approved by the department.

27 (d) A carpet stewardship organization that submits a plan
28 pursuant to this section shall consult with retailers and wholesalers
29 in the development of the plan, in order to minimize the impacts
30 of the plan on retailers and wholesalers.

31 (e) *A carpet stewardship organization shall notify the*
32 *department within 30 days after instituting a significant or material*
33 *change to an approved carpet stewardship plan.*

34 42972.5. (a) Notwithstanding *paragraph (1) of subdivision*
35 *(c) of Section 42972, on and after April July 1, 2011, but not on*
36 *or after January 1, 2013, a manufacturer of carpet shall add a carpet*
37 *stewardship assessment of five cents (\$0.05) per square yard to*
38 *the purchase price of all carpet sold in the state by that*
39 *manufacturer. The assessment added pursuant to this subdivision*
40 *shall be remitted on a quarterly basis, as appropriate, to CARE or*

1 be retained by the individual manufacturer referred to in
2 subparagraph (B) of paragraph (1) of subdivision (d) of Section
3 42971, for expenditure pursuant to subdivision (b).

4 ~~(b) Revenues derived from the assessment imposed pursuant to~~
5 ~~subdivision (a) shall only be expended by CARE or by an~~
6 ~~individual manufacturer, prior to approval of its carpet stewardship~~
7 ~~plan, to~~

8 *(b) Prior to approval of a carpet stewardship plan, CARE or*
9 *an individual manufacturer shall spend revenues from the*
10 *assessment imposed pursuant to subdivision (a) only to implement*
11 *early action measures that are consistent with the purposes of this*
12 *chapter and that are designed to achieve measurable improvements*
13 *in the landfill diversion and recycling of postconsumer carpet.*

14 42973. (a) (1) Within 60 days after the department receives
15 a plan submitted pursuant to Section 42972, it shall review the
16 plan, determine whether it complies with Section 42972, and notify
17 the submitter of its decision to approve or not approve the plan.

18 (2) On or after ~~January 1, 2013~~ *April 1, 2015*, an organization
19 appointed by one or more manufacturers to act as an agent on
20 behalf of the manufacturer to design, submit, and administer a
21 carpet stewardship plan pursuant to this chapter may submit a plan
22 to the department pursuant to Section 42972 and that plan may be
23 approved by the department, subject to the requirements of
24 paragraph (1), only if the department makes both of the following
25 findings:

26 (A) The plan will not have the effect of reducing the level of
27 diversion and recycling of postconsumer carpet that has been
28 achieved pursuant to this chapter at the time the department reviews
29 the plan.

30 (B) ~~The funding mechanism~~ *amount of the assessment* in the
31 plan will not create an unfair advantage in the marketplace for one
32 or more of the companies in the organization.

33 (b) If the department does not approve the plan, it shall describe
34 the reasons for its disapproval in the notice. The submitter may
35 revise and resubmit the plan within 60 days after receiving notice
36 of disapproval and the department shall review and approve or not
37 approve the revised plan within 60 days after receipt. Any plan
38 not approved by March 31, 2012, shall be out of compliance with
39 this chapter and the submitter of the plan is subject to the penalties

1 specified in Section 42978 until the plan is approved by the
2 department.

3 42974. (a) ~~(1)~~—The department shall enforce this chapter.

4 ~~(2) In enforcing this chapter, the department shall, as part of~~
5 ~~this enforcement authority, review the annual report prepared~~
6 ~~pursuant to Section 42976 and within 90 days of receipt, determine~~
7 ~~whether the submitter of the plan is in compliance with this chapter.~~

8 (b) On and after April 1, 2012, a manufacturer, wholesaler, or
9 retailer that offers a carpet for sale in this state, or who offers a
10 carpet for promotional purposes in this state, is not in compliance
11 with this chapter and is subject to penalties pursuant to Section
12 42978, if the carpet is not subject to a plan that is submitted by an
13 organization that includes the manufacturer of that carpet, which
14 plan has been approved by the department pursuant to Section
15 42973.

16 (c) *(1) On July 1, 2012, and not later than January 1 and July*
17 *1 annually thereafter, the department shall post a notice on its*
18 *Internet Web site listing manufacturers that are in compliance*
19 *with this chapter.*

20 *(2) A manufacturer that is not listed on the department's Internet*
21 *Web site pursuant to this subdivision, but demonstrates to the*
22 *satisfaction of the department that the manufacturer is in*
23 *compliance with this chapter before the next notice is required to*
24 *be posted, may request a certification letter from the department*
25 *stating that the manufacturer is in compliance. The letter shall*
26 *constitute proof of compliance with this chapter.*

27 *(d) A wholesaler or retailer that distributes or sells carpet shall*
28 *monitor the department's Internet Web site to determine if the sale*
29 *of a manufacturer's carpet is in compliance with the requirements*
30 *of this chapter.*

31 42975. (a) In order to achieve compliance with this chapter,
32 a carpet stewardship organization shall, on or before July 1, 2013,
33 and annually thereafter, demonstrate to the department that it has
34 achieved continuous meaningful improvement in the ~~rate of~~
35 ~~recycling~~ *rates of recycling and diversion* of postconsumer carpet
36 subject to its stewardship plan *and in meeting the other goals*
37 *included in the organization's plan pursuant to paragraph (2) of*
38 *subdivision (a) of Section 42972.* In determining compliance, the
39 department shall consider all of the following:

1 (1) The baseline rate of compliance against which the
2 demonstrated improvement is compared.

3 ~~(2) The goals included in the organization's plan pursuant to~~
4 ~~paragraph (2) of subdivision (a) of Section 42972.~~

5 ~~(3) The goals included in a national memorandum of~~
6 ~~understanding for carpet stewardship.~~

7 *(2) The goals included in the CARE MOU.*

8 ~~(4)~~

9 (3) Information provided in the organization's report to the
10 department pursuant to Section 42976.

11 ~~(b) The percentage of carpet that has been recycled shall be~~
12 ~~calculated by a method adopted by the department after consulting~~
13 ~~with carpet stewardship organizations and taking into account the~~
14 ~~information provided to the department in its annual report pursuant~~
15 ~~to Section 42976.~~

16 ~~(e)~~

17 *(b) If more than one organization submits a carpet stewardship*
18 *plan pursuant to this chapter, the department shall use information*
19 *submitted by the organization in its annual report pursuant to*
20 *Section 42976 to determine the recycling rate to what extent the*
21 *recycling and diversion rates and the achievement of the other*
22 *goals included in the plan are attributable to each organization*
23 *and shall determine compliance with this chapter in accordance*
24 *with that plan's recycling rate, accordingly.*

25 42976. On or before July 1, 2013, and each year thereafter, a
26 manufacturer of carpet sold in the state shall, individually or
27 through a carpet stewardship organization, submit to the department
28 a report describing its activities to achieve the purposes of this
29 chapter, as described in Section 42970, and to comply with Section
30 42975. At a minimum, the report shall include all of the following:

31 (a) ~~The total volume~~ *amount* of carpet sold by square yards and
32 weight, in the state during the reporting period. *A carpet*
33 *stewardship organization with more than one manufacturer may*
34 *use average weight.*

35 (b) ~~The total volume~~ *amount* of postconsumer carpet recycled,
36 by weight, ~~in the state~~ during the reporting period.

37 (c) ~~The total volume~~ *amount* of postconsumer carpet recovered
38 but not recycled, by weight, and its ultimate disposition.

39 (d) The total cost of implementing the carpet stewardship
40 program and other elements of the carpet stewardship plan. *plan.*

1 (e) An evaluation of the effectiveness of the ~~program, its funding~~
2 ~~mechanism, and other elements of the carpet stewardship plan,~~
3 and anticipated steps, if needed, to improve performance.

4 (f) Examples of educational materials that were provided to
5 consumers during the reporting period.

6 42977. (a) The carpet stewardship organization submitting a
7 carpet stewardship plan shall pay the department an annual
8 administrative fee. The department shall set the fee at an amount
9 that, when paid by every carpet stewardship organization that
10 submits a carpet stewardship plan, is adequate to cover the
11 department's full costs of administering and enforcing this chapter,
12 including any program development costs or regulatory costs
13 incurred by the department prior to carpet stewardship plans being
14 submitted. The department may establish a variable fee based on
15 relevant factors, including, but not limited to, the portion of carpets
16 sold in the state by members of the organization compared to the
17 total amount of carpet sold in the state by all organizations
18 submitting a carpet stewardship plan.

19 (b) The total amount of annual fees collected pursuant to this
20 section shall not exceed the amount necessary to recover costs
21 incurred by the department in connection with the administration
22 and enforcement of the requirements of this chapter. ~~The~~
23 ~~department may expend those annual fees, upon appropriation by~~
24 ~~the Legislature, to recover those costs.~~

25 (c) *The department shall identify the direct development or*
26 *regulatory costs it incurs pursuant to this chapter prior to the*
27 *submittal of a carpet stewardship plan and shall establish a fee in*
28 *an amount adequate to cover those costs, which shall be paid by*
29 *a carpet stewardship organization that submits a carpet*
30 *stewardship plan. The fee established pursuant to this subdivision*
31 *shall be paid in three equal payments pursuant to the schedule*
32 *specified in subdivision (d).*

33 (d) *A carpet stewardship organization subject to this section*
34 *shall pay the department the administrative fee pursuant to*
35 *subdivision (a) on or before July 1, 2012, and annually thereafter*
36 *and the applicable portion of the fee pursuant to subdivision (c)*
37 *on July 1, 2012, and annually thereafter through July 1, 2014.*
38 *Each year after the initial payment, the annual administrative fee*
39 *may not exceed 5 percent of the aggregate assessment collected*
40 *for the preceding calendar year.*

1 (e) *The department shall deposit the fees collected pursuant to*
2 *this section into the Carpet Stewardship Account created pursuant*
3 *to Section 42977.1.*

4 42977.1. (a) *The Carpet Stewardship Account and the Carpet*
5 *Stewardship Penalty Subaccount are hereby established in the*
6 *Integrated Waste Management Fund.*

7 (b) *All fees collected by the department pursuant to this article*
8 *shall be deposited in the Carpet Stewardship Account and may be*
9 *expended by the department, upon appropriation by the*
10 *Legislature, to cover the department's costs to implement this*
11 *chapter.*

12 (c) *All civil penalties collected pursuant to this article shall be*
13 *deposited in the Carpet Stewardship Penalty Subaccount and may*
14 *be expended by the department, upon appropriation by the*
15 *Legislature, to cover the department's costs to implement this*
16 *chapter.*

17 42978. (a) A civil penalty up to the following amounts may
18 be administratively imposed by the department on any person who
19 is in violation of any provision of this chapter:

20 (1) One thousand dollars (\$1,000) per day.

21 (2) Ten thousand dollars (\$10,000) per day if the violation is
22 intentional, knowing, or negligent.

23 ~~(b) Any penalties collected by the department may be expended~~
24 ~~by the department, upon appropriation by the Legislature, to offset~~
25 ~~the cost of administering and enforcing this chapter.~~

26 (b) *In assessing or reviewing the amount of a civil penalty*
27 *imposed pursuant to subdivision (a) for a violation of this chapter,*
28 *the department or the court shall consider all of the following:*

29 (1) *The nature and extent of the violation.*

30 (2) *The number and severity of the violation or violations.*

31 (3) *The economic effect of the penalty on the violator.*

32 (4) *Whether the violator took good faith measures to comply*
33 *with this chapter and the period of time over which these measures*
34 *were taken.*

35 (5) *The willfulness of the violator's misconduct.*

36 (6) *The deterrent effect that the imposition of the penalty would*
37 *have on both the violator and the regulated community.*

38 (7) *Any other factor that justice may require.*

39 42979. (a) This chapter does not limit, supersede, duplicate,
40 or otherwise conflict with the authority of the Department of Toxic

1 Substances Control under Section 25257.1 of the Health and Safety
2 Code to fully implement Article 14 (commencing with Section
3 25251) of Chapter 6.5 of Division 20 of the Health and Safety
4 Code, including the authority of the department to include a carpet
5 in a product registry adopted pursuant to that article.

6 (b) Notwithstanding subdivision (a), the Department of Toxic
7 Substances Control shall fully consider the measures taken by the
8 carpet industry pursuant to this chapter, and the results of those
9 measures, when considering whether to include carpet in a product
10 registry adopted pursuant to, or to otherwise regulate carpet
11 pursuant to, Article 14 (commencing with Section 25251) of
12 Chapter 6.5 of Division 20 of the Health and Safety Code.

13 42980. (a) On or before January 1, 2014, the department and
14 the Department of General Services shall complete a study that
15 examines the ~~standard~~ *specifications* for carpet purchases by the
16 state, as provided in the American National Standards Institute
17 (NSF/ANSI) ~~140-2007~~ *140-2009* Standard, Platinum Level, as in
18 effect on January 1, 2011 *or the most current version in effect*, and
19 shall submit the study to the Governor and the Legislature pursuant
20 to Section 9795 of the Government Code, including
21 recommendation for any appropriate changes to that standard. In
22 examining the standard and recommending changes to the standard,
23 the department and the Department of General Services shall
24 consider all of the following:

25 (1) Any changes to the standard that would further the purpose
26 of this chapter.

27 (2) Any changes to the standard that would improve the
28 environmental sustainability of carpet purchased by the state.

29 (3) The life-cycle impacts of proposed changes to the standard.

30 (4) The impacts of the proposed changes to the standard on
31 source reduction.

32 (5) The impacts of the proposed changes to the standard on the
33 recyclability of carpet.

34 (6) Economic and technological barriers to the proposed changes
35 to the standard.

36 (b) The department and Department of General Services shall
37 hold at least one workshop to receive comments from interested
38 stakeholders prior to the completion of the study.

39 (c) Pursuant to Section 10231.5 of the Government Code, this
40 section is repealed on January 1, 2018.

1 42981. (a) Except as provided in subdivision (b), any action
2 by a carpet stewardship organization or its members that relates
3 to any of the following is not a violation of the Cartwright Act
4 (Chapter 2 (commencing with Section 16700) of Part 2 of Division
5 7 of the Business and Professions Code), the Unfair Practices Act
6 (Chapter 4 (commencing with Section 17000) of Part 2 of Division
7 7 of the Business and Professions Code), or the Unfair Competition
8 Law (Chapter 5 (commencing with Section 17200) of Part 2 of
9 Division 7 of the Business and Professions Code):

10 (1) The creation, implementation, or management of a carpet
11 stewardship plan approved by the department pursuant to Section
12 42973 and the types or quantities of carpet being recycled or
13 otherwise managed as described in Section 42970.

14 (2) The cost and structure of an approved carpet stewardship
15 plan.

16 (3) The establishment, administration, or disbursement of a
17 carpet stewardship assessment as described in Section 42972 or
18 42972.5.

19 (b) Subdivision (a) does not apply to an agreement that does
20 any of the following:

21 (1) Fixes a price of or for carpet, except for any agreement
22 related to a carpet stewardship assessment pursuant to Section
23 42972.5 or to a carpet stewardship plan approved by the
24 department and otherwise in accordance with this chapter.

25 (2) Fixes the output of production of carpet.

26 (3) Restricts the geographic area in which, or customers to
27 whom, carpet will be sold.

28 42982. The Department of General Services shall, to the extent
29 feasible and within existing resources, take appropriate steps,
30 including, but not limited to, revising relevant procurement rules,
31 to ensure that postconsumer carpet that is removed from state
32 buildings is managed in a manner consistent with the purpose of
33 this chapter.

34 42983. It is the intent of the Legislature to review any federal
35 law that has the purpose of managing postconsumer carpet in a
36 manner consistent with this chapter and to consider the extent to
37 which the program created by that federal law will, at a minimum,

- 1 *achieve the same levels of landfill diversion and recycling of*
- 2 *postconsumer carpet in California as this chapter.*

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